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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
for the elaboration of a draft optional
protocol to the Convention on the Rights
of the Child on the sale of children,
child prostitution and child pornography
Third session
3-14 February 1997

COMMENTS ON THE REPORT OF THE WORKING GROUP

Note by the Secretary-General

Addendum

The present document contains comments submitted by the Governments of Kuwait, Spain and Sweden and by the United Nations Children's Fund.

GE.97-10107 (E)

Kuwait

[Original: Arabic]
[22 April 1996]

The Government of Kuwait made the following comments.

1. These guidelines should be based on a study and understanding of the factors underlying the decline in moral values in some societies.

2. Any optional protocol to the Convention on the Rights of the Child of 1989 should take into consideration the need to safeguard the best general interests of the child to the greatest possible extent and to provide the child with more legal protection by strengthening the provisions concerning the guarantees enjoyed by the child under the terms of the said Convention and other relevant international instruments and conventions.

3. In the event of international or regional disasters or armed conflicts, children are more at risk than others. Accordingly, States should take the measures needed to protect children from sale, sexual exploitation and other inhuman practices to which they are exposed in such circumstances.

4. In addition to the recommendation made in the guidelines to the effect that the sale and sexual exploitation of children should be designated as punishable offences, child sex tourism and the production, distribution and acquisition of pornographic material involving children should also be designated as legally punishable criminal acts since they are just as dangerous as the sale of children and child prostitution and, moreover, are highly conducive to the commission of those illegal practices and acts.

5. Paragraph (a) of the chapter on information, education and participation states that consideration should be given to the launching of campaigns involving the media in order to inform people and sensitize them to the gravity and dangers inherent in the sale of children and child prostitution. However, in addition to the recommendations made in the above-mentioned paragraph, it would be helpful if those information campaigns also specified the penalties to which the perpetrators of those acts are liable since the stimulation of public awareness in regard to the gravity of those acts, with emphasis on the penalties applicable to their perpetrators, would deter people from committing those inhuman practices. In this connection, it should be borne in mind that many of those penalties have been incorporated in the Kuwaiti Penal Code. Moreover, in the opinion of the Kuwaiti authorities, paragraph (d) of this chapter should also refer to the need to make the public more aware of the services that States should render to the victims of such practices. Public opinion should be sensitized and programmes should be formulated for the groups and categories whose children are vulnerable to exploitation through sale, prostitution or pornography. Such groups and categories should be provided with guidance through information programmes and educational symposia highlighting the dangers of those violations of the rights of the child and their adverse effects on the family and society. Emphasis should also be placed on the manner in which the information media can influence the values of the younger generation in human societies, and the

international organizations concerned with children, particularly UNICEF, should urge international information networks to endeavour to promote high moral and religious values throughout the world.

6. The measures referred to in paragraph 1 of chapter VI on assistance, rehabilitation and compensation, which States are required to take in order to assist the victims of sale, sexual exploitation and pornography, should also include social education measures to emphasize the importance of the social reintegration of the victims of such acts. Accordingly, the Kuwaiti authorities propose the addition of the words "and promote their social reintegration" in the said paragraph 1. They also believe that such rehabilitation would be facilitated by the establishment of institutions to cater for the welfare of those victims, particularly in cases of abuse by a parent. The methods applied to deal with such cases should be consistent in all States in order to ensure the maximum benefit in this regard. It would also be appropriate if the guidelines included a provision concerning the protection and care of refugee children since it is a well-known fact, proved by practices in some States, that refugee children have been exploited by being forced to engage in acts that are incompatible with humanitarian values. It would be appropriate for the protocol to include new provisions to deal with such cases.

7. The protocol should also refer to the promulgation of criminal legislation under which parents would be held accountable for any negligence in the upbringing of their children and for any remissness in providing them with guidance and supervision in their daily lives.

8. The protocol should not disregard the important role that schools and educational programmes play in stimulating children's awareness of the dangers to which they might be exposed, particularly in regard to the exploitation of children.

9. Family cohesion should be strengthened and special programmes should be formulated to help families to protect their members, particularly children, from any form of vagrancy, waywardness or delinquency that might provide opportunities for their exploitation.

10. Reference should be made to the need for adherence to the social, religious and moral principles and values the influence of which has declined in the age of materialism, and to the need to expand the lofty beliefs propagated by the divinely-revealed religions which play a role in promoting social discipline, developing the human conscience and providing protection from aberrant behaviour.

11. Reference should be made to the need for the adoption of socio-economic development plans in the developing countries and for an improvement in the standard of living of the poorest sections of society, which should be guaranteed an adequate income through monthly financial assistance or an expansion of the scope of family production and product-marketing projects in order to eliminate poverty, which provides fertile ground for the phenomena of delinquency and exploitation.

12. Paragraph 1 of chapter IV of the protocol calls for the prescription of appropriate penalties to prevent the sale of children, child prostitution and child pornography. Disabled children undoubtedly require more care than others and, consequently, heavier penalties should be imposed if they are subjected to such acts.

13. With regard to the compensation referred to in paragraph 5 of chapter IV, provision should be made for an effective means of protection, namely an undertaking by the State to pay damages if the offender is unknown or insolvent, particularly since the trend in many legislative systems is for the State to play a role in compensating the victims of the offence in such cases.

14. The competent authorities propose the addition of the words "applying the proceeds of these earnings to compensate the child victims of those operations" at the end of paragraph 3 of chapter IV.

15. They also propose that a phrase should be added at the end of article A in chapter V to the effect that specialized police departments could be established to combat operations involving the sale of children, child prostitution and child pornography in order to be able to monitor, and consequently combat, the latest methods adopted by the perpetrators of these reprehensible operations. Following these comments on the guidelines for a draft optional protocol on the sale of children, child prostitution and child pornography, it should be pointed out that this protocol should not include any repetition of the basic provisions of the Convention on the Rights of the Child, which would be pointless. In fact, the protocol should supplement the Convention in order to achieve the desired aim, which is to protect children from sexual exploitation and to finally eradicate such exploitation.

Spain

[Original: Spanish]
[15 November 1996]

1. Spain played an active part in the drafting of the text of the Convention on the Rights of the Child and ratified it through the instrument of 30 November 1990, with no reservations.

2. It merely submitted two interpretative statements, one relating to the way in which Spain intended to interpret the concept of "improper financial gain" in connection with inter-country adoption (art. 21) and the other to the age of participation of minors in armed conflicts (art. 38, paras. 2 and 3).

3. Spain's initial report to the Committee on the Rights of the Child was submitted punctually and considered at the Committee's 171st, 172nd and 173rd meetings on 6 and 7 October 1994. The Committee expressed its satisfaction with the comprehensive report submitted and the interpretative statements mentioned above.

4. In keeping with the foregoing, Spain supports resolution 1996/85 concerning the elaboration of a draft optional protocol on the involvement of children in armed conflicts and a draft optional protocol on the sale of children, child prostitution and child pornography.

5. Regarding measures to prevent and eradicate the sale of children, child prostitution and child pornography, the Directorate-General for Social Welfare, Minors and the Family stated that it had attended the Stockholm Conference, following which a seminar on the subject was held and attended by representatives of both governmental agencies and non-governmental organizations.

6. In addition, the Secretary-General for Social Affairs has conducted a study on the treatment of offences against sexual freedom in the Penal Code having suggested to the Ministry of Justice that the Code should be amended.

7. Spain therefore supports both the text of resolution 1996/85 and the elaboration of an additional protocol to the Convention, and the provision of such support as may be considered appropriate to enable the Special Rapporteur on the sale of children, child prostitution and child pornography to fulfil her mandate and submit the relevant report.

8. Spain stands ready to cooperate with her and provide her with any information that may be necessary.

Sweden

[Original: English]
[18 December 1996]

1. The Government of Sweden welcomes all efforts aiming at ending all forms of sexual exploitation of children. As host country of the World Congress against Commercial Sexual Exploitation of Children, Sweden has shown its strong commitment in the struggle for enhanced respect for the rights of the child. The Swedish Government strongly believes that there is an urgent need for concerted actions at the international level as well as at the national level to fight these dreadful phenomena.

2. It is the view of the Government of Sweden that the protection of children from sexual exploitation is best achieved by enhancing the implementation of the Convention on the Rights of the Child. The Declaration and Agenda for Action, adopted at the World Congress against Commercial Sexual Exploitation of Children, is an important tool for working towards this goal. It emphasizes the need for thorough implementation and the need to promote international cooperation in the fields of prevention and prosecution of the sexual exploitation of children and also to ensure that child victims of such criminal practices are not punished but on the contrary receive protection.

3. An optional protocol should be supplementary to the fundamental provisions of the Convention on the Rights of the Child and other pertinent norms and mechanisms and should be aimed at the full implementation of the Convention. It should reinforce the criminalization of the sale of children, child prostitution and child pornography, and decriminalize child victims. The approach should focus specifically on the sale of children for prostitution and pornography as such. This will enable an optional protocol to address the issue of sexual exploitation of children in all its aspects.

4. There is no definition of the concepts - sale of children, child prostitution and child pornography - in the Convention on the Rights of the Child. The Government of Sweden is concerned that efforts to reach a consensus on a definition would be extremely time-consuming and risk undermining relevant provisions in the Convention. A more constructive approach would therefore be to interpret these concepts in the light of the legal systems of member States.

5. It is essential that the drafting of an optional protocol is not done hastily without necessary care and consideration. The optional protocol should be consistent with the high quality of existing standards.

United Nations Children's Fund

[Original: English]
[9 December 1996]

1. All forms of sexual abuse and exploitation, including the sale of children, child prostitution and pornography are of serious concern to UNICEF. Through its country programmes of cooperation, and in collaboration with Governments and non-governmental organizations, UNICEF supports initiatives addressing these issues, including preventive education for girls and their families, research on trafficking, police training, national campaigns against child prostitution, as well as HIV/AIDS, and health promotion for street children.

2. The recent World Congress against Commercial Sexual Exploitation of Children provided an excellent forum for discussion on specific strategies which need to be put in place to prevent and eradicate sexual abuse and exploitation of children. The Agenda for Action adopted in Stockholm provides the international community with a guiding framework. Given the significant impact that the Congress has had in raising global awareness of such gross violations of children's rights, the working group should be encouraged to consider the recommendations in the Agenda for Action in their deliberations.

3. UNICEF supports the process of drafting an optional protocol on the sale of children, child prostitution and pornography. We maintain, however, the importance of implementing existing international and national standards, such as the Convention on the Rights of the Child and the United Nations Programme of Action to combat the sale of children, child prostitution and child pornography adopted by the Commission on Human Rights, and enabling existing mechanisms to fulfil their mandate. We take note of the fact that the working group has applied a holistic approach to the Convention and has incorporated the Convention's principles in the text of the draft optional protocol.